IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3884 OF 2006

Yatiraji Mahadev Patil & Ors. ...Applicants

Vs.

The Special Executive Magistrate,
Raigad, at Alibag & Anr. ...Respondents

Shri K.S.Patil for the Applicants.
Shri S.R.Shinde, A.P.P for the State.

CORAM : A. S. OKA, J.
DATE : NOVEMBER 09, 2006.

P.C.:

1. Heard the Advocate for the Applicants and the learned A.P.P for the State. The grievance of the Applicants is that show cause under section 111 of the Code of Criminal Procedure, 1973 was not served to the Applicants and a summons under section 113 of the said Code is served in which a direction has been given to the Applicants to attend the office of the Special Executive Magistrate, Raigad at Alibag on 18th October, 2006. The Advocate for the Applicants pointed out that the summons records a direction to the Applicants to remain present with sureties. He submitted that without passing any order under sub-section 3 of section 116 of the said Code, the said direction has been issued. He submitted that the proceedings are vitiated as a show cause notice is not at all served.

2. The learned A.P.P on instructions stated that interim order under sub-section 3 of section 116 of the Code of Criminal Procedure, 1973 will not be passed and the Authority will proceed strictly in accordance with provisions of Chapter VIII of the said Code and pass appropriate order after holding an inquiry in the manner contemplated by Chapter VIII. He has produced for my perusal the file of the case.

3. Perusal of the file shows that a preliminary order as required by section 111 of said Code was passed on 16th October, 2006 and by the said order, a show cause notice under section 111 and a summons under 113 of the said Code was ordered to be served to the Applicants. It appears that on the basis of the said order, only a summons was issued on 16th October, 2006 and was served to the Applicants. The file shows that the show cause notice was issued on 18th October, 2006 and was served to the Applicants on 19th October, 2006. On the same day, the present Application was filed in this court. Thus, the condition precedent for initiation of the proceeding under Chapter VIII is complied with by passing an order under section 111 of the said Code.

4. There is justification in the grievance of the Advocate for the Applicants that in the summons, a direction could not have been issued against the Applicants to keep surety present on the next date. The learned A.P.P has stated that a direction for furnishing interim bond under sub-section 3 of section 116 will not be passed and the Authority concerned will hold an inquiry in accordance with law.

5. In view of the aforesaid statements, now the Chapter case can proceed further after giving an opportunity to the Applicants to file reply. It is needless to say that the learned Special Executive Magistrate is bound to follow procedure as contemplated in section 116 of the said Code.

6. Considering the manner in which summons has been issued, it is necessary to direct that in the event any final order is passed which is adverse to the Applicants, the same shall not be implemented for a reasonable period.

7. Hence, I pass the following order:

(i) The statements made by the learned A.P.P are accepted.

(ii) In view of the said statements, now it will not be necessary for the Applicants to secure presence of sureties before the conclusion of the inquiry.

(iii) It will be open for the Applicants to file a reply to the show cause notice within a period of four weeks from today.

(iv) The learned Magistrate will hold an inquiry in accordance with law. If the final order passed by the learned Magistrate is adverse to the Applicants, the same will not be given effect for a period of two weeks from the date of passing the order.

(v) All contentions of the parties in the pending case are expressly kept open.

(vi) Parties to act upon an authenticated copy of this order.

JUDGE